

1 sense that the -- that we'll be looking for  
2 active participation by the applicant parties if  
3 there is a phase on penalty or remedy, whatever  
4 you want to call it if we don't get to that  
5 because of the determination of no liability.  
6 And, you know, they're scot free. That's  
7 essentially what we're talking about, isn't it,  
8 sir?

9 MS. KANE: That's what we had  
10 understood.

11 JUDGE SIPPEL: Did I say it the right  
12 way?

13 MR. HULL: I heard that, you know, we  
14 had proposed a two-phase process.

15 JUDGE SIPPEL: Yes.

16 MR. HULL: So, I thought that that was  
17 --

18 JUDGE SIPPEL: That's what I was  
19 trying to restate.

20 MR. HULL: No, then I think then  
21 you're describing a process that's something  
22 different than what we had proposed.

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1 JUDGE SIPPEL: Oh, I am. Oh, okay,  
2 what am I saying that's different or that's --

3 MR. HULL: What we had proposed was  
4 that you take the issues that were in the  
5 ordering clause and you look at the first seven  
6 of them or so, A through G, and it's fairly clear  
7 that there isn't going to be any discovery, that  
8 the applicant parties have any relevant  
9 information on. The issues are not relevant to  
10 the applicant parties. Possibly they might  
11 tangentially have some information that the  
12 Bureau wanted but -- and there's no need to get  
13 to these last three issues to the extent the  
14 first seven or so result in Maritime not being  
15 found to be in violation. So, the whole point of  
16 trying to bifurcate it was to create some  
17 judicial economy by answering the first seven  
18 questions and then seeing whether we need to go  
19 on to work out the last three.

20 JUDGE SIPPEL: All right. Well --

21 MR. LIEBERMAN: If I could respond to  
22 that, Your Honor?

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1 JUDGE SIPPEL: Certainly.

2 MS. KANE: Your Honor, that was our  
3 main concern and problem with their proposal is  
4 that they were seeking to bifurcate discovery of  
5 the assignees until some later date. And,  
6 perhaps, it sounds like suggesting multiple  
7 hearings.

8 MR. HULL: Well, let me clarify the  
9 first point. Certainly, as Your Honor indicated,  
10 discovery could be had from anyone who was a  
11 party to the proceeding and then any other  
12 necessary person outside the proceeding. That's  
13 not the point. But what this would do would be  
14 to limit the issues that were being discovered at  
15 the outset to ones that are relevant to the first  
16 questions of whether there's a violation or not.  
17 And then to the extent it was necessary,  
18 discovery could be had to these other issues  
19 where the applicants might conceivably have  
20 something of value.

21 JUDGE SIPPEL: Well, what exactly --  
22 I want to be sure I'm clear on this. What

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1 exactly are the issues that you wanted to, in  
2 effect, bifurcate out for the first round?

3 MR. HULL: Your Honor, the first round  
4 would be issues A through G in the ordering  
5 clauses, Paragraph number 62, A through G in the  
6 Hearing Designation Order on page 28 of the  
7 order.

8 JUDGE SIPPEL: All right. A through  
9 G, they're in. I mean, that's what goes forward.

10 MR. HULL: That's right. That's  
11 right.

12 JUDGE SIPPEL: Then what comes out?

13 MR. HULL: Then the second phase would  
14 be H through J.

15 MR. LIEBERMAN: May I respond to that?

16 JUDGE SIPPEL: Well, yes. Go ahead,  
17 Mr. Lieberman, yes.

18 MR. LIEBERMAN: Mr. Havens -- on  
19 behalf of Mr. Havens, we strongly object to that  
20 type of bifurcation because H, I and J are the  
21 essence of this case. It's our position that,  
22 especially H, in light of the evidence adduced,

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1       whether Maritime is qualified to remain a  
2       commissioner licensee, why bifurcate that when,  
3       in fact, we will be writing proposed findings of  
4       fact and conclusions of law on this record? The  
5       proposed findings of fact are and, therefore, the  
6       conclusions of law are in a sense A through G are  
7       proposed findings of fact and H, I and J are  
8       conclusions of law. These are one in the same.

9               MR. HULL: I totally disagree with  
10       that, Your Honor.

11              MR. LIEBERMAN: This is not a civil  
12       case where we're going to have a liability phase  
13       and a damages phase or a criminal case where  
14       we're first find whether the person is guilty and  
15       then have a sentencing phase. This is an  
16       administrative proceeding where, in essence, the  
17       question is, is this party qualified to be and  
18       remain a commissioner licensee? That's the  
19       essence of the whole case. That's why we're  
20       here.

21              MS. KANE: Your Honor, the Bureau  
22       would agree that it would be difficulty to

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1 segregate out, certainly H and I from any of the  
2 earlier issues. And what it sounds to us is that  
3 the utilities are suggesting a second hearing on  
4 whether or not their application should be  
5 granted after a first hearing would determine  
6 whether Maritime would be qualified to remain a  
7 licensee. But they have yet to articulate what  
8 it is that they're actually seeking in terms of  
9 multiple hearings. But, you know, it was our  
10 concern as we talked to them about their proposal  
11 that it would be difficult to segregate out,  
12 certainly for discovery purposes, issues that  
13 related for A through G and A through J because  
14 they were intertwined. And we were concerned  
15 about them unduly limiting the Bureau's ability  
16 to seek discovery by saying it doesn't have to do  
17 with Item A through G.

18 JUDGE SIPPEL: Well, I'm going a  
19 little bit of back and forth on that because I  
20 understand your concern. I'm beginning to  
21 understand it more clearly now, in fact. But as  
22 I said before, the door is wide open for

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1 discovery as long as the evidence is relevant. I  
2 don't care who has it. I don't care whether they  
3 say things are bifurcated or not bifurcated. If  
4 the evidence is relevant to the main issue in  
5 this case, it's going to be discoverable.

6 Second question is, I was thinking  
7 more in terms of if it turns out that there was a  
8 determination, and again this is hypothetical,  
9 that Maritime should be revoked. There's other  
10 considerations at the tail end of this too in  
11 terms of the bidding. There's money involved  
12 with the bidding. Is that right?

13 MS. KANE: Correct, Your Honor.

14 JUDGE SIPPEL: Plus accrued interest  
15 and I guess the question would be with respect to  
16 -- I don't know if I really can take any action  
17 with respect to those applications. This is not  
18 a question where I could -- there's nothing in  
19 here that's asking me to determine whether or not  
20 the applicant should -- whether their application  
21 should be granted or --

22 MS. KANE: Yes, Your Honor.

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1 MR. RICHARDS: Your Honor, on behalf  
2 of our applicant clients, perhaps what we're  
3 discussing here is a little bit different than  
4 has been described that the phases perhaps should  
5 be A through I which would include the two issues  
6 that the Havens' counsel has raised--

7 JUDGE SIPPEL: Yes,

8 MR. RICHARDS: -- H and J. From our  
9 perspective as I think you noted in the  
10 beginning, the proposed assignees are not alleged  
11 to have engaged in any wrongdoing under this  
12 Hearing Designation Order. The only question  
13 relevant to us it seems to me is J whether our  
14 applications should be granted in light of the  
15 foregoing issues. And that it seems to me  
16 implies that even if the licenses were to be  
17 revoked, arguably our applications could be  
18 granted under the circumstances.

19 MS. KANE: Your Honor, I guess we're  
20 still confused to whether or not what they're  
21 asking for is there to be a hearing now on Items  
22 A through I, have Your Honor issue a decision and

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1 then have a second hearing and a second decision  
2 on J.

3 JUDGE SIPPEL: Well, that's --

4 MS. KANE: That seems cumbersome and  
5 unnecessary when the HDO put them altogether in  
6 discovery as I believe you've now indicated is  
7 related to all of these issues.

8 JUDGE SIPPEL: Well, I'm trying to get  
9 -- I'm trying to work down that way but I  
10 misstated something. I thought that J had to  
11 deal with Maritime that you filed by or on behalf  
12 of Maritime.

13 MR. KELLER: But those are assignment  
14 applications, Your Honor. The only applications  
15 listed in the caption are --

16 JUDGE SIPPEL: Okay.

17 MR. KELLER: -- Maritime to assign on  
18 the applicant parties of the assignees.

19 JUDGE SIPPEL: So, it includes  
20 assignment applications.

21 MR. KELLER: It's only assignment  
22 applications frankly.

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1 JUDGE SIPPEL: Well, however you want  
2 to say it. Yes, I see what you're saying. Of  
3 course, of course.

4 MR. LIEBERMAN: But, Your Honor, if I  
5 may, if the outcome on A through I is that the  
6 licenses should be revoked which is the last word  
7 of I, we shouldn't have another whole procedure  
8 that takes more time so that the applicants can  
9 come in and say, yes, but under J we should be  
10 assigned these licenses anyway even though  
11 they've been revoked because our position on  
12 behalf of Havens will be, no. They are revoked,  
13 voice ab initio and there's nothing to assign.  
14 It's clear ab initio precedent that if the  
15 licensee --

16 JUDGE SIPPEL: Wasn't it Jefferson or  
17 something or other case?

18 MR. LIEBERMAN: Yes, Jefferson.

19 JUDGE SIPPEL: That would kick right  
20 in, it seems to me.

21 MR. LIEBERMAN: And that's about what  
22 I was just about to say. Thank you, Your Honor.

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1 MS. KANE: The Bureau --

2 JUDGE SIPPEL: That's a question of  
3 law. That's not a question of fact.

4 MR. LIEBERMAN: Yes.

5 MS. KANE: The Bureau would agree that  
6 should the licenses be revoked, it really is very  
7 little further to say that the application should  
8 be, you know, for the Judge to determine whether  
9 the application should be granted. But it seems  
10 cumbersome to have a second hearing on that  
11 issue.

12 MR. HULL: Your Honor, the  
13 counterpoint to that is that it would be  
14 cumbersome to essentially require participation  
15 of the applicants in a hearing that has seven  
16 points of fact-finding and conclusions of law  
17 that they have nothing to do with.

18 JUDGE SIPPEL: Well, you don't have to  
19 participate in it. That's what I'm trying to get  
20 to.

21 MR. HULL: I understand that you're  
22 saying there would be sort of a level of non-

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1 participation. If we're only having one track,  
2 if we're only having one phase, how do we know  
3 when we have to jump in and start defending our  
4 rights to the assignment in the line? That's the  
5 problem. So, if you bifurcate it serially--

6 JUDGE SIPPEL: Well, I mean it goes  
7 without saying. Sometimes these things can come  
8 out a way you're not expecting it. But if it's a  
9 clear case of Maritime being revoked, basically  
10 being revoked, then as I say Jefferson City,  
11 something or other, I mean, it just stops.  
12 That's it. They will not be in a position to do  
13 anything with those licenses but turn it back to  
14 the Commission.

15 MR. MILLER: Your Honor, my only  
16 question in that regard is why the Commission  
17 then designated Issue J which is to determine in  
18 light of the foregoing whether the captioned  
19 application should be granted which to me seems  
20 to imply we would have the ability to argue that  
21 our licenses should be granted. The application  
22 should be granted in light of the disposition of

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1 the foregoing issues.

2 MR. LIEBERMAN: And if I may respond,  
3 Your Honor. I think what the Commission has said  
4 is the last word of I is revoked. If they're not  
5 revoked, then in light of that whether the  
6 application should be granted, right? If they  
7 are revoked under Jefferson Radio, I believe it  
8 is, there is nothing to assign. There is nothing  
9 to sell.

10 JUDGE SIPPEL: That's exactly --

11 MR. CATALANO: Your Honor?

12 JUDGE SIPPEL: Yes, sir.

13 MR. CATALANO: Your Honor, I think it  
14 becomes a question of law and in Footnote 7, the  
15 Commission has let an applicant out of the  
16 proceeding before there is a determination of the  
17 revocation. And I would think that this Court  
18 either would have the discretion to do that on  
19 the public interest before the revocation takes  
20 place or at least to certify the question to the  
21 Commission at that point whether or not the  
22 public interest in granting these applications to

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1 these entities that severely need the spectrum  
2 should be granted before any decision on the  
3 revocation becomes final. So, I don't think it's  
4 quite as simple as Jefferson Radio states out  
5 front because number one, that was the year of  
6 broadcasting. Number two, it was a policy  
7 decision in that context. And I think as a  
8 question of law we're in a little different  
9 situation here as Footnote 7 points out by the  
10 Commission's decision.

11 MR. LIEBERMAN: And if I may respond,  
12 Your Honor. What's been stated is precisely to  
13 me a reason not to bifurcate. Yes, the applicant  
14 parties can choose to be passive participants, to  
15 let someone designate one lawyer to monitor the  
16 proceeding for them to determine which direction  
17 the proceeding is going. They may all need to  
18 show up one day or they all may remain passive  
19 and file short findings saying we agree with  
20 party "X". But what's just been said as I say is  
21 a reason not to bifurcate the proceeding because  
22 they're intrinsically inter-connected.

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1 MS. KANE: Your Honor, I think we're  
2 sort of getting ahead of ourselves in --

3 JUDGE SIPPEL: I think so.

4 MS. KANE: -- in this line of argument  
5 about asking Your Honor to exclude them from the  
6 hearing. I think at this point those are  
7 arguments they can make and proposed findings  
8 and, you know, right now we should be focused on  
9 a schedule and not some of these other later  
10 issues.

11 JUDGE SIPPEL: Yes, I'm with you on  
12 that. A 100 percent with you on that.

13 If something quirky comes up down the  
14 road, I mean, you can always file a, you know, a  
15 request of a conference to discuss or, you know,  
16 file some kind of a motion seeking some kin of  
17 relief. But right now I can't anticipate  
18 anything like that happening. And I think that  
19 Mr. Lieberman has a right. I mean, you have a  
20 right -- in other words, if you were parties to  
21 this case in the true sense of the word you  
22 wouldn't show up for court, you know, I could

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1 dismiss you on that basis. That's not going to  
2 happen. You're not that kind of a party. So, I  
3 mean, there is a sense. There is a bifurcation  
4 but it's not in the sense that it's going to be a  
5 clinical bifurcation. It's kind of a moving  
6 target bifurcation, if you will.

7           What I'm trying to do is I'm trying to  
8 move the case along and I'm trying to avoid  
9 inconveniencing parties that don't need to --  
10 they just don't need to be involved in these  
11 things. So, you certainly do in my case. I  
12 expect that's going to happen. Some way shape or  
13 form somebody is -- you get copies of everything.  
14 You get copies of all the motion papers. You get  
15 copies of all the orders. You get copies of any  
16 transcript you want. You get copies of anything  
17 you want and however you want to manage that in  
18 terms of having a central place that's going to  
19 summarize it for everybody or whether you only  
20 get your separate one, that's all fine and good.  
21 And if you need something, you feel you really  
22 need something from, you know, from myself, you

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1 know, file a motion for whatever it is that you  
2 think you need. Certainly if anybody is  
3 harassing you, I expect that you're going to be  
4 filing, you know, a protective order -- a motion  
5 for a protective order. So, you got a lot of  
6 rights, practically all the rights except I'm not  
7 really denying your right to participate, I just  
8 don't want you around. And I don't think you  
9 want to be here.

10 So, I hope that's acceptable to  
11 everybody and then we just have to take it from  
12 there. So, I guess I'll deny the petition, the  
13 motion to bifurcate as it has been framed. I'm  
14 going to deny it subject to all the ifs, ands and  
15 buts that I've said before that and I'm expecting  
16 something in the term of a stipulation to be  
17 worked out setting as much of this detail as you  
18 need setting it forth. And it can be a so-  
19 ordered stipulation and I'll sign it if I think  
20 it should be.

21 MR. MILLER: Your Honor?

22 JUDGE SIPPEL: Yes, sir.

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1 MR. MILLER: There's a pending request  
2 for admissions by Mr. Lieberman's clients and I  
3 think you deferred until the 24th.

4 JUDGE SIPPEL: Yes, I don't want  
5 anybody to get cut short on that.

6 MR. MILLER: Yes, but in light of what  
7 we're talking about today, we believe that a  
8 number of the requests for admissions go beyond  
9 the scope of what we talked about today in terms  
10 of our recent terms of the applicant parties.  
11 So, I don't know whether it would be, you know, I  
12 don't know how you want to handle it. I would  
13 propose deferring any obligation on our part to  
14 do that until maybe you've made a decision with  
15 respect to -- or the parties have agreed to limit  
16 the scope of discovery and maybe as part of that  
17 arrangement, that Mr. Lieberman's clients can  
18 narrow down their request for admissions.

19 JUDGE SIPPEL: Consider it granted.  
20 All right? Right now we're working on a  
21 discovery schedule, well, I mean, all these days  
22 that have been proposed. So, that's going to be

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1 the controlling document. What it doesn't have,  
2 it doesn't have a commencement of discovery date  
3 to the extent that they've been commenced.

4 MR. KELLER: Filed a request for  
5 admission technically under the rules, not  
6 discovery but, you know --

7 MS. KANE: Your Honor --

8 JUDGE SIPPEL: Yes, I want to hear  
9 you.

10 MS. KANE: -- one of the issues I  
11 wanted to raise with you was an actual protective  
12 order that we referenced earlier concerning  
13 confidential information and business  
14 information. And we've been working with Mr.  
15 Keller to agree to a discovery order that then we  
16 were going to submit to the other assignees for  
17 their approval. But we would like your  
18 assistance in maybe setting a deadline by which  
19 that needs to be entered because as the Bureau  
20 has pointed out in its motion for additional  
21 requests for admission, we have been hampered in  
22 our ability to seek discovery because Mr.

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1 Keller's client has requested confidential  
2 treatment for representing anything during the  
3 investigative process and we're not at liberty  
4 because of those confidentiality rules to seek  
5 discovery concerning that information until a  
6 protective order has been issued. So we'll be--

7 JUDGE SIPPEL: How far along are you  
8 on a protective order, the terms of one?

9 MS. KANE: I think we're relatively  
10 close. We had reached out to Mr. Keller a couple  
11 of weeks ago and we have gotten his response just  
12 the other day with his rejected edits. We expect  
13 to be able to get back to him earlier -- you  
14 know, later this week. And then be able to  
15 circulate it to the other parties. So we were  
16 hopeful that Your Honor would be able to enter an  
17 order by no later than July 1st and be able to  
18 give us both some opportunity for discovery after  
19 that point.

20 JUDGE SIPPEL: Okay. I'll tell you  
21 what we're going to do. We're going to set it  
22 for June 29th. 29 June. By 29 June I'm going to

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1 expect a proposed protective order for me to look  
2 at. Okay?

3 MS. KANE: Thank you, Your Honor.

4 JUDGE SIPPEL: And I say, if there's  
5 anything that comes up in terms of structuring or  
6 something like that, feel free to contact Mr.  
7 Ross during business days.

8 MS. KANE: Okay.

9 JUDGE SIPPEL: You know, I can work  
10 with you through him.

11 And I'm being very liberal on --  
12 lenient or whatever word you want to use, use of  
13 email and for purposes of clarifying things. So  
14 I'd rather you start the emailing through Mr.  
15 Ross. Well, I get a copy; just send me a copy of  
16 anything you send to anybody. That's easy.

17 So on June 29th. Okay. That's  
18 protective order.

19 Now there are pending requests for  
20 admissions both by the Bureau, right, you've got  
21 them out there?

22 MS. KANE: Right.

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1 JUDGE SIPPEL: And by Mr. Havens. And  
2 what would be -- well if you're willing just to  
3 just leave them in -- I mean, some of them seem  
4 to be a bit broad, but if you want to negotiate  
5 with the applicants who are complaining about the  
6 scope of those try and narrow them down, that's  
7 fine. If not, then there's going to have to be a  
8 date set for filing an objection to the  
9 admissions.

10 MR. LIEBERMAN: Well, I agree with Mr.  
11 Miller's suggestion that, as you know, we've just  
12 been retained to represent Mr. Havens.

13 JUDGE SIPPEL: Yes, sir.

14 MR. LIEBERMAN: And we didn't draft  
15 the request for admissions and I have not  
16 reviewed them carefully myself. So I'm willing  
17 to go through and review them carefully and  
18 narrow them down to the extent possible.

19 JUDGE SIPPEL: All right. Can you do  
20 that by the 29th do you think?

21 MR. LIEBERMAN: Yes, sir.

22 JUDGE SIPPEL: So you're going to

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1 refile on the 29th? Refill request for  
2 admissions. Okay. And that's on the part of Mr.  
3 Havens.

4 MS. KANE: Your Honor --

5 JUDGE SIPPEL: Yes, ma'am. Yes, ma'am.

6 MS. KANE: With regard to the Bureau's  
7 request for admissions --

8 JUDGE SIPPEL: Yes.

9 MS. KANE: -- those are being directed  
10 solely to Maritime and it should not be embroiled  
11 in either the stipulation or Mr. Havens review --  
12 or I'm sorry. Mr. Lieberman's review of Mr.  
13 Havens' request for admission. Can we set a date  
14 certain by --

15 JUDGE SIPPEL: I was just about to do  
16 that.

17 MS. KANE: Okay. Thank you, Your  
18 Honor.

19 MR. KELLER: I think you already have,  
20 Your Honor. I mean with your order --

21 JUDGE SIPPEL: I did? Did I do that?

22 MR. KELLER: Let me just say this--

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1 JUDGE SIPPEL: I'm sorry. I want to do  
2 for everybody what I'm doing. I don't one to do,  
3 you know one for somebody.

4 What time do you need to respond?

5 MR. KELLER: We'll certainly make  
6 every effort to meet this June 24th date, that's  
7 the date we requested. And if there's any reason  
8 we can't, we will give all the answers we can and  
9 request a --

10 JUDGE SIPPEL: That's right, I did  
11 request that. Okay.

12 MR. KELLER: But the June 24th date is  
13 okay for now.

14 JUDGE SIPPEL: Okay. Well try and  
15 meet it.

16 MR. KELLER: Oh, we're going to. But  
17 subject to whatever ever else we discuss here.

18 JUDGE SIPPEL: Okay. So you're going  
19 to answer the request to admit.

20 Now on this again, the procedure here,  
21 I would be expecting that those answers are  
22 certainly going to be given to the Bureau

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1 counsel, but also that everybody else gets them  
2 too.

3 MR. KELLER: I think so, I mean  
4 whatever the procedures are.

5 MR. KELLER: Right.

6 JUDGE SIPPEL: Yes. Well I mean to  
7 say, well I'm talking about this business about  
8 the yes you're a party/no you're a party stuff.  
9 I mean all of the applicant parties should also  
10 get copies --

11 MR. KELLER: Yes. Right.

12 JUDGE SIPPEL: -- unless they  
13 designate somebody as being a point person. I'm  
14 not going to order that, but that's all up to  
15 you.

16 MR. KELLER: Understood. Understood.

17 I also want to clarify something.  
18 While we can make the Bureau's -- the June 24th  
19 date for responding to the Bureau.

20 JUDGE SIPPEL: Okay.

21 MR. KELLER: We would like to have the  
22 same time period for the Havens requests for

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